

The Administrative Law Judge adopted the opinions of the two treating physicians that claimant had no permanent functional impairment as a result of her work-related injuries. The sole issue raised on review by the claimant is the nature and extent of the claimant's disability. The claimant does not contend that she is entitled to a work disability but seeks an award for permanent partial disability compensation based upon her

percentage of functional impairment within the range of opinions expressed by Drs. Murati and Brown.

Conversely, the respondent contends the award should be affirmed.

### **FINDINGS OF FACT & CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, and the stipulations of the parties, the Board makes the following findings of fact and conclusions of law:

#### **Findings of Fact**

The claimant sustained personal injury by accident arising out of and in the course of her employment on August 25, 1998, while working for respondent, a temporary employment agency. The claimant had been assigned to work at Ameri-Kart which manufactures industrial containers.

The claimant's job consisted of working with the plastic lids for industrial trash cans. After she would drill holes in the lids and attach the nuts and bolts, the lids would then be placed into a box lying on the floor. After the box was full, the claimant would then reach under the box and lift it upright. The claimant sustained injury to her lower back and middle fingers on each hand while she was lifting the boxes upright on August 25, 1998.

The claimant was referred for medical treatment with Dr. Douglas Curry. Dr. Curry initially saw the claimant on August 31, 1998. The claimant complained of pain in her left middle finger, lower back and pelvic region. X-rays were negative for fractures. Dr. Curry diagnosed the claimant as having suffered a contusion of the left long finger and lumbosacral strain. During the next few weeks, the claimant continued to complain of significant back pain which radiated into her legs. Dr. Curry ordered a bone scan which returned with normal findings. On November 11, 1998, Dr. Curry gave claimant a trigger point injection in her sacral spine. A week later, the claimant advised Dr. Curry that she had pain shooting down the front of her legs subsequent to the injection and was having terrible pain in her sacrum. The doctor termed those complaints as ridiculous. Dr. Curry advised the claimant that he did not find any evidence of a significant problem and that claimant should return to work. During this exchange the claimant angrily jumped up and left the doctor's office. Dr. Curry concluded that the claimant was capable of returning to work without any restrictions.

The claimant saw Dr. Murati on December 7, 1998, for treatment recommendations. After his examination of the claimant, Dr. Murati diagnosed lumbosacral strain, left sacroiliac joint disfunction and right hand third digit pain. The doctor suggested a course of physical therapy, injection to the sacroiliac joint region and further recommended that the patient undergo a psychological evaluation.

On March 18, 1999, the claimant began treatment with Dr. Pollock. At that visit, the claimant complained of pain in the third finger of her right hand radiating up her right arm to her shoulder and neck. In addition, the claimant complained of numbness in her left hand, right ankle weakness, and aching sensation in both legs as well as her lower back. The doctor's physical examination was noted as unremarkable although the claimant did have some tenderness in her lower back with a decreased range of motion.

During the course of treatment with Dr. Pollock, a Tens unit was prescribed for the claimant's back and she underwent a regime of physical therapy as well as ultrasound treatment. Dr. Pollock further prescribed ankle braces for the claimant's ankle pain. Ultimately, Dr. Pollock released the claimant from treatment on November 9, 1999, without any restrictions. Dr. Pollock noted that during the course of his treatment, the claimant's complaints included both legs, her back, right hand, right middle finger, her patella femoral joints, her upper tibia, lower femur and both ankles. The doctor noted that throughout the visits there had been a remarkable lack of true objective findings referable to any of her complaints. Dr. Pollock concluded the claimant did not have any permanent impairment.

The claimant was evaluated by Dr. Murati for rating and restrictions on March 2, 2000, at the request of her attorney. As a result of that examination, Dr. Murati diagnosed low back pain secondary to strain with left S1 radiculopathy, right second and third digit pain and synovial hypertrophy of the right third PIP joint. Dr. Murati imposed restrictions of occasional climbing stairs, climbing ladders, squatting, crawling, driving; frequent sitting, standing, walking, kneeling; lift/carry/push/pull 20 pounds occasional, 10 pounds frequent, 5 pounds constant; use good body mechanics and alternate sitting, standing and walking.

Dr. Murati opined the claimant had a 10 percent right hand impairment for loss of range of motion of the second and third digits which converts to a 9 percent upper extremity which converts to a 5 percent whole person impairment. For the low back pain secondary to the S1 radiculopathy, the claimant was placed in DRE category 3 for a 10 percent whole person impairment. Using the combined values charts, Dr. Murati concluded the claimant had a 15 percent functional impairment to the body as whole according to the Fourth Edition of the *AMA Guides to the Evaluation of Permanent Impairment*.

The Administrative Law Judge ordered an independent medical evaluation with Dr. C. Reiff Brown. The claimant was seen by Dr. Brown on June 13, 2000. In addition to his examination of the claimant, Dr. Brown was also provided the medical records of Drs. Curry and Pollock and the two reports from Dr. Murati dated December 7, 1998, and February 2, 2000.

The claimant complained to Dr. Brown of constant pain in the lumbar area which increased with any physical activity. The claimant further complained of ankle weakness, frequent sprains, that her right middle finger catches and locks, stiffness and loss of motion in her right shoulder, pain in her left middle finger, a loss of grip strength in both hands

more severe on the right, and pain in the distal anterior aspect of the thighs that shoots downward into the front of the lower legs.

Dr. Brown noted that the claimant was extremely over reactive and complained of tenderness in most any part of her body that was palpated. Moreover, the pain was distributed in a nonanatomic manner and her over reactive behavior was atypical but consistent with her abnormal Waddell's and nonorganic physical signs. The doctor noted that there was no objective data to substantiate the vast majority of her complaints.

Dr. Brown concluded that the majority of the claimant's complaints were totally unexplainable on an organic basis. However, he did testify the claimant had evidence of rotator cuff tendonitis of the right shoulder with a resulting loss of range of motion which would result in a 4 percent impairment to the right upper extremity. The claimant also had objective evidence of tendonitis in the middle finger of the right hand as well as a small tendon nodule and that the finger occasionally does trigger. The doctor opined this constituted a 1 percent impairment of the right upper extremity. However, Dr. Brown concluded that he could not connect these pathological conditions to the traumatic injury described by the claimant. The doctor further noted that he could not connect the complaints to the legs, knees and the instability of the ankles to her work-related injury.

Dr. Brown noted that the claimant does have symptoms consistent with a lumbar sprain which would account for her low back problems and that, at most due to this sprain, the claimant would be entitled to a 5 percent impairment based on category 2 of the DRE system of the Fourth Edition of the *AMA Guides*. The doctor specifically noted that his opinion that the back condition exists is based entirely upon the claimant's subjective complaints of pain. The doctor suggested permanent work restrictions of limiting lifting to 40 pounds occasionally, 25 pounds frequently and all lifting with proper body mechanics. The doctor noted that these restrictions were related only to the lumbar strain which was the only area of complaint the doctor could possibly relate to claimant's work-related injury.

### **Conclusions of Law**

The Workers Compensation Act places the burden of proof upon the claimant to establish the right to an award of compensation and to prove the conditions on which that right depends.<sup>1</sup> "Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."<sup>2</sup>

The claimant noted at the regular hearing that she was not seeking a work disability and was only seeking a functional impairment. Functional impairment is the extent,

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<sup>1</sup>K.S.A. 1998 Supp. 44-501(a).

<sup>2</sup>K.S.A. 1998 Supp. 44-508(g).

expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence and based on the AMA *Guides*. At the time of claimant's injury, the Act required that functional impairment be based on the Fourth Edition of those *Guides*.<sup>3</sup>

The Board, as a trier of fact, must decide which testimony is more accurate and/or more credible and must adjust the medical testimony along with the claimant's testimony and any other testimony that might be relevant to the question of disability.<sup>4</sup>

The claimant underwent a long course of treatment during which her complaints became increasingly bizarre and nonanatomic. The treating doctors commented upon the lack of objective findings to substantiate the claimant's complaints. Dr. Murati suggested a psychiatric evaluation. The court ordered independent medical examiner noted that the claimant was extremely over reactive, complained of tenderness in most any body part that was palpated and that the pain was distributed in a non-anatomic manner.

Illustrative of the nature of the claimant's complaints is the following colloquy:

Q. Did you tell Dr. Curry you were having problems with your shoulder or neck?

A. No.

Q. Why not?

A. Because I didn't want to hear the word operation, because I don't want to wear a hook on my right hand. I don't want to lose my hand.

. . . Q. Had somebody told that you if you had surgery to your arm, that you were going to lose your hand and have to wear a hook on your hand?

A. No, I just know it for a fact. I have seen women with hooks on their hands, and if my hand gets operated on and gets infected and gets cut off, you have to wear a hook.<sup>5</sup>

The preponderance of the medical evidence does not contain objective findings that can be related to the claimant's accidental injury. The independent medical examiner, Dr. Brown, specifically noted that at most he could only rate the claimant for a lumbar sprain and that was based upon the claimant's complaints. The absence of any objective findings to support her myriad claims of pain, in and of itself, does not mandate a finding that the

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<sup>3</sup>K.S.A. 1998 Supp. 44-510e(a).

<sup>4</sup>*Tovar v. IBP, Inc.*, 15 Kan. App. 2d 782, 817 P.2d 212, rev. denied 249 Kan. 778 (1991).

<sup>5</sup>Deposition of Regular Hearing, June 15, 2000; pp.20-21.

claimant failed to meet her burden of proof. However, where there are just subjective complaints of pain, the claimant's credibility is a paramount consideration for the trier of fact. In this case, the Administrative Law Judge observed the claimant and concluded that the testimony of the treating physicians should be accorded more weight than the claimant's testimony. The Board agrees with that determination and affirms the finding that as a result of her work-related injury the claimant sustained a temporary injury but did not prove that she sustained any permanent functional impairment.

It should be noted that the Administrative Law Judge's Award specifically finds that the respondent is only responsible for the cost of medical treatment. It was stipulated by the parties that this was a compensable claim and it was further stipulated that temporary total disability compensation had been paid. The claimant sustained a temporary injury which resulted in medical treatment and temporary total disability compensation. Respondent is responsible for the temporary total disability compensation as well as the medical treatment.

The Board affirms the determination that as a result of her work-related injury the claimant sustained a temporary injury which resulted in no permanent impairment of function.

### **AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Nelsonna Potts Barnes dated September 11, 2000, is hereby modified in accordance with the foregoing findings.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of April 2001.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

pc: Robert R. Lee, Attorney for Claimant, Wichita, Kansas

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Nelsonna P. Barnes, Administrative Law Judge

Philip S. Harness, Workers Compensation Director